

WP(PIL) No. 06 of 2020

In Re: Covid 19 Management

Date: 23/06/2021

CORAM:

**HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.**

For Petitioner(s) : Mr. Jorgay Namka, Advocate as Amicus Curiae.

For Respondent(s)
R-1, R-2 & R-12 : Ms Sangita Pradhan, Assistant Solicitor General of India

R3 to R-11 : Mr. Sudesh Joshi, Additional Advocate General.
Mr. Hissey Gyaltzen, Assistant Government Advocate.

Mr. K. Sreenivasulu, IAS, Additional Chief Secretary (Health & Family Welfare Department, Government of Sikkim.

Dr. Pempa Tshering Bhutia, Director General-cum-Secretary, Health and Family Welfare Department, Government of Sikkim

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Bhaskar Raj Pradhan J.

1. We have also heard Mr. Jorgay Namka learned amicus curiae, Ms. Sangita Pradhan, learned Assistant Solicitor General of India representing respondent nos. 1, 2 and 12 and Mr. Sudesh Joshi, learned Additional Advocate General representing respondent nos. 3 to 11 (State respondents). Mr. K. Sreenivasulu, IAS, Additional Chief Secretary, Health & Family Welfare Department, Government of Sikkim and Dr. Pempa Tshering Bhutia, Director General-cum-

Secretary, Health and Family Welfare Department, Government of Sikkim were also present through video conferencing.

2. Pursuant to our order dated 17.06.2021 the State Government has filed a report dated 22.06.2021 seeking to explain and provide further information. We take the report on record. We take note of the various measures taken by the State during the pandemic to meet the emergent situations including utilization of available infrastructure, creation of infrastructures, procurement of medical equipments and employment of man power. It is however, noticed and pointed out that many of the information provided therein does not indicate when exactly they were set up or procured. It is also noted that most of the augmentation of COVID-19 dedicated resources has been done in the year 2021 in the other districts besides the east district. In some of the charts there is clubbing of the infrastructure development of medical facilities in the districts with measures taken during the COVID-19 pandemic. In the matter before us we are concerned with the augmentation of resources relating to COVID-19 only. Although the report does indicate that the State took several steps to ramp up the health infrastructure and facilities to deal with the COVID-19 pandemic we are concerned that the State Government did not feel it necessary to formulate any concrete policy to face the present COVID-19 pandemic. Huge amount of information has been provided to us in the form of various reports submitted from time to time and as directed. However, we do not see nor are we provided

with a rational and planned thinking process. Emergent situation seem to have been met on need basis. The information provided to us in the form of various reports does indicate that a lot more is to be done to meet the challenges brought by each new wave of the COVID-19 pandemic especially in the districts. We are conscious that the augmentation of resources in situation like this is also an ongoing process and many decisions may have to be taken instantly faced with the situation which are new and hitherto before unknown. However, having said that, the experience in the last two years of the pandemic does provide a number of useful information and indicators for the State to augment its resources in a more systematic and planned manner which is the need of the hour. The studies and experiences of other countries and other States would also be a huge resource for the State to formulate a good policy. The setting up of Viral Research and Diagnostic Laboratory (VRDL) in the East district only knowing well the acute geographical barriers between the four districts is an indicator for the need of a substantial policy decision. We are informed that the State Government has made necessary applications for setting up of VRDL in all the districts. We are of the considered view that the Centre as well the State must act in unison to provide the necessary infrastructure to all the districts in Sikkim so that RTPCR testing facilities are available for every citizen of the State easily. The State must continue to increase testing until the positivity rate, which is alarmingly high, is brought under absolute

control. This becomes imperative due to the fact that with the onset of monsoons which lasts for several months in a year landslides completely cut off the districts from the capital Gangtok making it extremely difficult for people to travel all the way to Gangtok to avail the facilities here.

3. We take note of the fact that as per the report dated 22.06.2021 the population of persons above 18 years who at present can and should be vaccinated stands at 4,72,000. We also note with appreciation that at present 3,01,679 persons have been vaccinated with the first dose and 83,575 persons have been vaccinated with both the doses. This also means that 1,70,321 persons are not yet vaccinated even with the first dose. We are informed that the centre, at present decides the monthly quota of free vaccines to be made available to each State. The Revised Guidelines for Implementation of National COVID-19 Vaccination Programme which came into effect from 21st June, 2021 contemplates that the Government of India would provide vaccine doses free of cost and would be allocated to States/UTs based on criteria such as population, disease burden and the progress of vaccination. It also provides that wastage of vaccine will affect the allocation negatively. Vaccinating the entire population of the State of Sikkim which is rather miniscule compared to other States ought not to be a challenge. It could be done in the shortest possible time. Considering the rather small population yet to be vaccinated, the number of vaccination achieved by the State within the short

period, the present disease burden leading to high positivity and death rate coupled with the inadequate medical facilities in the State of Sikkim it may not be inappropriate for the Centre and the State to ensure that the entire population of the State which is eligible for vaccination is vaccinated at the earliest by increasing the State quota of vaccines. We also note that a number of vaccination centers have been set up in all the four districts with both man power and infrastructure which can be utilized to its optimum if the Government of India would provide more vaccines. The State on its turn should ensure equitable distribution of the vaccines in all the four districts on a broad policy decision keeping in mind the population ratio and all other equitable considerations which would further help the State achieve the desired target, faster and better. We therefore, implore the Centre as well as the State to make available vaccines to achieve the goal of vaccinating the entire population of the State of Sikkim who are eligible to be vaccinated but are yet to be, keeping in mind the above factors.

4. The report dated 22.06.2021 also provide information of setting up of COVID-19 care centers and quarantine centers but it does not indicate the infrastructural, medical facilities and human resources that have been provided in these centers. We do hope that the Government of India guidelines have been strictly followed and all measures and requirements needed for taking care of COVID-19 patients in these facilities have been provided. We direct the State to furnish details of the measures taken and facilities

provided vis-à-vis the guidelines issued by way of an affidavit including the human resources.

5. The reports filed by the State as regards the ambulances available in the State of Sikkim are unclear. The reports indicate one thing and the clarification given at the hearing by the learned Additional Advocate General on being instructed by the senior officers present indicate something else. Although the report dated 24.05.2021 states that a number of basic ambulances are available with the State it is unclear whether basic ambulances has oxygen and paramedic support. The latest report indicates that ambulances have been distributed to the district hospitals and to some PHC's as well. However, in the annexed charts there is indication that only some of the ambulances are with oxygen support. However, there is no indication whether these ambulances are with paramedic support. The report dated 24.05.2021 indicate that the State has 63 ambulances and has acquired 6 additional ambulance fully equipped with life support system including oxygen. It is stated that these fully equipped ambulances are being distributed to all districts to transport COVID-19 patients to and fro the district and to the COVID-19 hospital, Gangtok. This must be done, if not done already on an urgent basis and a report filed indicating compliance. On a query raised by this court and on instruction received the learned Additional Advocate General clarified that the basic ambulances availability indicated in the chart annexed to its report dated

14.06.2021 would have oxygen facility but without paramedic support. We are informed that even the drivers driving the ambulances are trained to administer oxygen. This is a good thing. It was also informed that the concerned medical authorities would decide whether paramedic, nurse or doctor would be required to travel with the patient on examination and accordingly provide the support. We take note of what has been stated and implore the State to ensure that no COVID-19 patient who require medical attendant, oxygen support and ventilator support in the ambulances travel without it. The State shall file a report with the above clarifications.

6. We take note of the fact that the State Government had a preliminary meeting of the technical committee on 14.06.2021 to discuss the measures for COVID-19 third wave. However, we note with concern that no timeline has been set up for submission of technical details to formulate the policy and for taking various measures to ramp up the infrastructural medical and clinical facilities. This become more important in view of the indication received that the third wave could hit within weeks. We note the oral submission made by the Additional Advocate General that the policy should be in place within a week and augmentation done as per the policy before the onslaught of the third wave. The Government of India has come out with various guidelines which are available in the Ministry of Health & Family Welfare website like the Guidelines for Management of COVID-19 in Children (below 18

years) dated 18th June, 2021, Guidelines on Operationalization of COVID-19 Care Services for Children and Adolescents of June 2021 etc., which should be taken into consideration along with all other guidelines, instructions and study materials including the rich experiences of the State medical team before formulating the policy and for augmenting the State resources.

7. List the matter on 07.07.2021 before which date the State as well as the Center may file necessary affidavits showing compliance of the directions issued by this court from time to time and reports as indicated hereinabove.

Judge

Chief Justice

Index : ~~Yes~~ / No
Internet : Yes / ~~No~~

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